

UTILITIES CODE

TITLE 2. PUBLIC UTILITY REGULATORY ACT

SUBTITLE B. ELECTRIC UTILITIES

CHAPTER 31. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 31.001. LEGISLATIVE FINDINGS; PURPOSE OF SUBTITLE.

(a) This subtitle is enacted to protect the public interest inherent in the rates and services of electric utilities. The purpose of this subtitle is to establish a comprehensive and adequate regulatory system for electric utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the electric utilities.

(b) Electric utilities are by definition monopolies in many of the services provided and areas they serve. As a result, the normal forces of competition that regulate prices in a free enterprise society do not always operate. Public agencies regulate electric utility rates, operations, and services, except as otherwise provided by this subtitle.

(c) The wholesale electric industry, through federal legislative, judicial, and administrative actions, is becoming a more competitive industry that does not lend itself to traditional electric utility regulatory rules, policies, and principles. As a result, the public interest requires that rules, policies, and principles be formulated and applied to protect the public interest in a more competitive marketplace. The development of a competitive wholesale electric market that allows for increased participation by electric utilities and certain nonutilities is in the public interest.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 31.002. DEFINITIONS. In this subtitle:

(1) "Affiliated power generation company" means a power generation company that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(2) "Affiliated retail electric provider" means a

retail electric provider that is affiliated with or the successor in interest of an electric utility certificated to serve an area.

(3) "Aggregation" includes the following:

(A) the purchase of electricity from a retail electric provider, a municipally owned utility, or an electric cooperative by an electricity customer for its own use in multiple locations, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load; or

(B) the purchase of electricity by an electricity customer as part of a voluntary association of electricity customers, provided that an electricity customer may not avoid any nonbypassable charges or fees as a result of aggregating its load.

(4) "Customer choice" means the freedom of a retail customer to purchase electric services, either individually or through voluntary aggregation with other retail customers, from the provider or providers of the customer's choice and to choose among various fuel types, energy efficiency programs, and renewable power suppliers.

(4-a) "Distributed natural gas generation facility" means a facility installed on the customer's side of the meter that uses natural gas to generate not more than 2,000 kilowatts of electricity.

(5) "Electric Reliability Council of Texas" or "ERCOT" means the area in Texas served by electric utilities, municipally owned utilities, and electric cooperatives that is not synchronously interconnected with electric utilities outside the state.

(6) "Electric utility" means a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(A) a municipal corporation;

(B) a qualifying facility;

(C) a power generation company;

(D) an exempt wholesale generator;

(E) a power marketer;

(F) a corporation described by Section 32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

(G) an electric cooperative;

(H) a retail electric provider;

(I) this state or an agency of this state; or

(J) a person not otherwise an electric utility who:

(i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Subchapter C, Chapter 184.

(7) "Exempt wholesale generator" means a person who is engaged directly or indirectly through one or more affiliates exclusively in the business of owning or operating all or part of a facility for generating electric energy and selling electric energy at wholesale and who:

(A) does not own a facility for the transmission of electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale; and

(B) has:

(i) applied to the Federal Energy Regulatory Commission for a determination under 15 U.S.C. Section

79z-5a; or

(ii) registered as an exempt wholesale generator as required by Section 35.032.

(8) "Freeze period" means the period beginning on January 1, 1999, and ending on December 31, 2001.

(9) "Independent system operator" means an entity supervising the collective transmission facilities of a power region that is charged with nondiscriminatory coordination of market transactions, systemwide transmission planning, and network reliability.

(10) "Power generation company" means a person, including a person who owns or operates a distributed natural gas generation facility, that:

(A) generates electricity that is intended to be sold at wholesale, including the owner or operator of electric energy storage equipment or facilities to which Subchapter E, Chapter 35, applies;

(B) does not own a transmission or distribution facility in this state other than an essential interconnecting facility, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility" under this section; and

(C) does not have a certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated service area.

(11) "Power marketer" means a person who:

(A) becomes an owner of electric energy in this state for the purpose of selling the electric energy at wholesale;

(B) does not own generation, transmission, or distribution facilities in this state;

(C) does not have a certificated service area; and

(D) has:

(i) been granted authority by the Federal Energy Regulatory Commission to sell electric energy at market-based rates; or

(ii) registered as a power marketer under

Section 35.032.

(12) "Power region" means a contiguous geographical area which is a distinct region of the North American Electric Reliability Council.

(13) "Qualifying cogenerator" and "qualifying small power producer" have the meanings assigned those terms by 16 U.S.C. Sections 796(18)(C) and 796(17)(D). A qualifying cogenerator that provides electricity to a purchaser of the cogenerator's thermal output is not for that reason considered to be a retail electric provider or a power generation company.

(14) "Qualifying facility" means a qualifying cogenerator or qualifying small power producer.

(15) "Rate" includes a compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.

(16) "Retail customer" means the separately metered end-use customer who purchases and ultimately consumes electricity.

(17) "Retail electric provider" means a person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

(18) "Separately metered" means metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.

(19) "Transmission and distribution utility" means a person or river authority that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise

excluded from the definition of "electric utility" under this section, in a qualifying power region certified under Section [39.152](#), but does not include a municipally owned utility or an electric cooperative.

(20) "Transmission service" includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice, control area services, scheduling resources, regulation services, provision of operating reserves, and reactive power support, voltage control, and other services provided by generation resources are not "transmission service."

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 405, Sec. 11, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 890 (S.B. [365](#)), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1069 (S.B. [943](#)), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 979 (H.B. [2049](#)), Sec. 1, eff. September 1, 2013.

Sec. 31.003. REPORT ON SCOPE OF COMPETITION. (a) Before January 15 of each odd-numbered year, the commission shall report to the legislature on the scope of competition in electric markets and the effect of competition and industry restructuring on customers in both competitive and noncompetitive markets.

(b) The report under this section must include:

(1) an assessment of the effect of competition on the rates and availability of electric services for residential and small commercial customers;

(2) a summary of commission action over the preceding two years that reflects changes in the scope of competition in regulated electric markets; and

(3) recommendations to the legislature for legislation that the commission finds appropriate to promote the public interest in the context of a partially competitive electric market.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Sec. 31.004. ENERGY-EFFICIENT SCHOOL FACILITIES. (a) The commission may serve as a resource center to assist school districts in developing energy-efficient facilities.

(b) As a resource center under this section, the commission may:

(1) present programs to school districts relating to managing energy, training school-plant operators, and designing energy-efficient buildings;

(2) provide school districts with technical assistance in managing energy;

(3) collect and distribute information relating to energy management in school facilities; and

(4) offer energy resource workshops to educators and make available to educators a film library on energy-related matters and energy education lesson packages.

(c) The commission shall provide information to school districts regarding how a school district may finance the installation of solar electric generation panels for school district buildings.

Acts 1997, 75th Leg., ch. 166, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 939 (H.B. [3693](#)), Sec. 18, eff. September 1, 2007.

Sec. 31.005. CUSTOMER-OPTION PROGRAMS. (a) This section applies to:

(1) a municipally owned electric utility;

(2) an electric cooperative;

(3) an electric utility;

(4) a power marketer;

(5) a retail electric provider; and

(6) a transmission and distribution utility.

(b) An entity to which this section applies shall consider establishing customer-option programs that encourage the reduction of air contaminant emissions, such as:

(1) an appliance retirement and recycling program;

(2) a solar water heating market transformation program;

(3) an air conditioning tune-up program;

(4) a program that allows the use of on-site energy storage as an eligible efficiency measure in existing programs;

(5) a program that encourages the deployment of advanced electricity meters;

(6) a program that encourages the installation of cool roofing materials;

(7) a program that establishes lighting limits;

(8) a distributed energy generation technology program; and

(9) a program that encourages the use of high-efficiency building distribution transformers and variable air volume fan controls.

Added by Acts 2005, 79th Leg., Ch. 1095 (H.B. [2129](#)), Sec. 6, eff. September 1, 2005.

SUBCHAPTER B. CYBERSECURITY

Sec. 31.051. DEFINITION. In this subchapter, "utility" means:

(1) an electric cooperative;

(2) an electric utility;

(3) a municipally owned electric utility; or

(4) a transmission and distribution utility.

Added by Acts 2019, 86th Leg., R.S., Ch. 509 (S.B. [64](#)), Sec. 22, eff. September 1, 2019.

Sec. 31.052. CYBERSECURITY COORDINATION PROGRAM FOR UTILITIES. (a) The commission shall establish a program to monitor cybersecurity efforts among utilities in this state. The

program shall:

(1) provide guidance on best practices in cybersecurity and facilitate the sharing of cybersecurity information between utilities; and

(2) provide guidance on best practices for cybersecurity controls for supply chain risk management of cybersecurity systems used by utilities, which may include, as applicable, best practices related to:

(A) software integrity and authenticity;

(B) vendor risk management and procurement controls, including notification by vendors of incidents related to the vendor's products and services; and

(C) vendor remote access.

(b) The commission may collaborate with the state cybersecurity coordinator and the cybersecurity council established under Chapter 2054, Government Code, in implementing the program.

Added by Acts 2019, 86th Leg., R.S., Ch. 509 (S.B. 64), Sec. 22, eff. September 1, 2019.